Office Supreme Court, U.S.
FILED
AUG 1 1962
JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

No. 294

JOHN W. D. COLLINS and MARGARET W. COLLINS, *Plaintiffs*,

*v.*

THE UNITED STATES, *Defendant*.

## PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE COURT OF CLAIMS DATED MARCH 7, 1962

ROBERT H. McNEILL
*Attorney for Plaintiffs*
815 Fifteenth Street, N.W.
Washington 5, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

## TABLE OF CONTENTS


| | Page |
|---|---|
| Jurisdiction | 2 |
| Orders for Extension of Time | 2 |
| Findings of Fact | 2 |
| Statutes Involved | 2 |
| The Decision of the Court of Claims | 4 |
| Central Question Presented | 5 |
| Related Questions Arising from Evidence Presented | 5 |
| Argument | 9 |
| Gift in Contemplation of Death | 14 |
| Conclusion | 21 |

APPENDIX:

| | |
|---|---|
| Orders Extending Time for Filing | 1a, 2a |
| Decision of Court of Claims | 3a |
| Findings of Fact | 4a |


## INDEX OF CITATIONS


STATUTES:

| | |
|---|---|
| Revenue Act of 1918 | 14 |
| Revenue Act of 1950 | 2 |
| Internal Revenue Code of 1939 as amended | 3 |
| Internal Revenue Code of 1954 as amended | 3, 5, 6, 7, 10, 17 |
| Internal Revenue Code, Section 7701 | 4, 6, 7, 17 |
| 5th Amendment, United States Constitution | 4, 5, 8, 9, 10 |
| 14th Amendment, United States Constitution | 4, 5, 8, 9 |

CASES:

| | |
|---|---|
| Bailey v. Alabama, 219 U.S. 230 | 12 |
| Chase National Bank v. United States, 273 U.S. 827 | 11 |
| Coolidge v. Long, 282 U.S. 582 | 11, 13 |
| Heiner v. Doonan, 285 U.S. 312 | 12, 15, 16 |
| Hooper v. Tax Court, 284 U.S. 206 | 14, 15 |
| Manley v. Georgia, 239 U.S. 56 | 12 |
| Nichols v. Coolidge, 274 U.S. 531 | 11, 13 |
| Schlesinger v. Wisconsin, 270 U.S. 230 | 10, 13, 15 |
| United States v. Wells, 283 U.S. 102 | 11, 13, 14 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

---

No.

---

JOHN W. D. COLLINS and MARGARET W. COLLINS, *Plaintiffs*,

v.

THE UNITED STATES, *Defendant*.

---

## PETITION FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE COURT OF CLAIMS DATED MARCH 7, 1962

---

*To the Honorable The Chief Justice and the Associate Justices of The Supreme Court of the United States:*

Your petitioners, John W. D. Collins and Margaret W. Collins, husband and wife, in the action of themselves against the United States, in the United States Court of Claims, hereby pray this Honorable Court to issue its Writ of Certiorari to the Court of Claims to review the judgment of the Court of Claims rendered in the above entitled case, March 7, 1962, said case being numbered 477-56 in said Court of Claims.

## JURISDICTION

The jurisdiction of this Court is invoked under the provisions of Title 28, sub-section (b) of Section 288 of the United States Code.

The opinion and judgment of the Court of Claims and its Findings of Fact are herewith attached as part of this petition.

### Orders for Extensions of Time for Filing Petition for Certiorari

Extension of time for filing Petition:

Order of Chief Justice, dated June 4, 1962, extending time for filing Petition of Certiorari to July 5, 1962.

Order of Chief Justice, dated June 27, 1962, extending time for filing Petition to August 1, 1962.

Copies of orders of the Chief Justice attached hereto

### Findings of Facts

Plaintiffs and defendants have accepted the Findings of Fact stated by the U.S. Court of Claims in its decision of March 7, 1962 and any discussion of the facts herein will be based upon the Court of Claims Findings.

Plaintiffs only claim their right to refunds for all taxes levied and collected upon their earnings from the Panama Canal Co., and the Canal Zone Government for the years 1953 and 1954. Other claims are waived.

## STATUTES INVOLVED

*Revenue Act of 1950*

220. Employees of the United States Working in Possessions of the United States or in the Canal Zone.

Effective with respect to taxable years beginning after December 31, 1949, section 251 (relating to income from sources within possessions of United

States) is hereby amended by adding at the end thereof the following new subsection:

"(j) Employees of United States.—For the purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States."

*Internal Revenue Code of 1939 as amended*

Supplement J.—Possessions of the United States

251. Income from sources within possessions of United States.

(a) General rule.—In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States.

(j) Employees of United States.—For the purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources *within* the United States. (Italics supplied)

*Internal Revenue Code of 1954, as amended.*

931. Income from sources within possessions of the United States.

(i) Employees of the United States.—For purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States.

*Internal Revenue Code of 1954, as amended*

7701. Definitions:

(9) United States.—The term 'United States' when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

*Constitution of the United States—Amendment V.*

Trials for crimes: Just compensation for private property taken for public use.—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, *without just compensation.* (Italics ours.)

*Constitution of the United States—Amendment 14*

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

## THE DECISION OF THE COURT OF CLAIMS

"PER CURIAM: This is a suit for the recovery of income taxes deducted for the years 1951 through 1954 from the salaries of plaintiffs, husband and wife, who are citizens of the United States and were employed by various agencies of the United States Government while residing in the Republic of Panama in 1951 and 1952 and the Canal Zone in 1953 and 1954. The question involved is whether Section

251(j), of the Internal Revenue Code of 1939, 26 U.S.C. § 251 (1952 Ed.) and the comparable Section 931(i) of the Internal Revenue Code of 1954, 26 U.S.C. § 931 (1958 Ed.), contravene the due process clause of the Fifth Amendment to the Constitution, because they deny employees of the United States or its agencies an exemption from Federal income taxes when employed in possessions of the United States, by providing that income of Federal employees shall "be deemed to be derived from sources within the United States." Plaintiffs were employed by agencies of the United States located in an area within the legislative power of the United States. Therefore, the income was "derived from sources within the United States" and we hold it within the taxing power of the Congress. Plaintiffs are therefore not entitled to recover and their petition, as amended, will be dismissed."

## CENTRAL QUESTION PRESENTED

The question of central and vital importance is Plaintiffs contention that Sec. 931(i) of the Internal Revenue Code of 1954 is unconstitutional and violates the due process clauses of the 5th and 14th Amendments of the Constitution in that subsection (i) creates an irrebuttable presumption contrary to the existing facts and deprives Plaintiffs of their constitutional right of due process—i.e. the right to prove that the presumption in subsection (i) of Section 931 is arbitrary and capricious and contrary to the facts and creates a wrongful tax liability.

## RELATED QUESTIONS ARISING FROM THE EVIDENCE PRESENTED

Related questions to this central question presented in the above decision of the Court of Claims are the following:

1. Whether the Court of Claims decision misinterprets the legal meaning of section 931(i) of the Internal Revenue Code of 1954, wherein it *did not decide*, as it should have

that said subsection (i) is unconstitutional and violative of the 14th and 5th amendments to the Constitution.

2. *Whether* the decision of the Court of Claims of March 7, 1962 conflicts with decisions of this Court in its failure to hold that subsection (i) of Section 931 of the Internal Revenue Code of 1954 creates against Plaintiffs an irrebuttable presumption against fact, to wit that their earnings for 1953 and 1954 were legally earned and received *within* the boundaries of the United States and were within the taxing power of the Congress when, as petitioners claim, and as the Findings of Fact by the United States Court of Claims show, such income received for the years 1953 and 1954 *were earned and paid outside of the United States and were not taxable because such assessments are based upon an irrebuttable presumption, contrary to the facts*, as stated in the evidence, which presumption was a violation of the 5th and 14th Amendments of the Constitution of the United States, and also a violation of the terms of Section 7701, subsection 9 of the Internal Revenue Code of 1954, which defines the term UNITED STATES in its "geographical" sense, as follows:

> "7701. Definitions.
>
> (9) UNITED STATES.—The term 'United States' when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia." . . .

3. *Whether* the Opinion and Judgment of the Court of Claims, denying plaintiffs' the tax refunds for the years 1953 and 1954, was arbitrary and unsupported by the facts and whether or not said Court of Claims committed error in dismissing Plaintiffs claims for refunds of said taxes.

4. *Whether* said U. S. Court of Claims misinterpreted Section 931(i) of the Internal Revenue Code of 1954, as

amended, by its holding that the taxes paid by Plaintiffs on their earnings for the years 1953 and 1954 were earned and accrued to Plaintiffs within the United States, for services rendered for the Canal Zone Government and for the Panama Canal Co., when they were in fact employed and served as employees of the Canal Zone Government and the Panama Canal Co., outside the boundaries of the United States.

5. *Whether* the U. S. Court of Claims erroneously misinterpreted subsection (i) of Section 931 of the 1954 Internal Revenue Code in its decision of March 7, 1962, that Plaintiffs earnings were taxable because of an irrebuttable presumption, contrary to fact, in subsection (i) of Section 931, Internal Revenue Code of 1954 to the effect that said earnings for the years 1953 and 1954 were, under subsection (1), *deemed to be* derived from sources *within* the United States, in violation of Plaintiffs constitutional rights of due process.

6. *Whether* said U. S. Court of Claims erred in its March 7, 1962 Opinion and Judgment in holding that the wages paid to Plaintiffs for the years 1953 and 1954 were taxable because the area where such sums were earned by and paid to Plaintiffs was legally "*within the taxing power of the United States*", when, as a matter of law and fact, said area, where said taxes were assessed and collected, was legally and in fact *outside* the geographical boundaries of the United States, as defined by Section 7701, subsection 9, of the Internal Revenue Code of 1954, as above quoted.

7. *Whether* said U. S. Court of Claims, in its opinion and judgment, has decided important questions of Federal Law in such a way as to be in conflict with applicable decisions of this Court, and has erroneously failed to pass upon the question of the constitutionality of such Federal Law to wit; Section 931 subsection (i) Internal Revenue Code of 1954, said decision resulting in a denial of due process of

law to Plaintiffs, as guaranteed by the 5th and 14th Amendments of the Constitution, thereby depriving Plaintiffs of tax exemptions on their earnings while employed by the Panama Canal Zone, and by the Panama Canal Government, *outside the boundaries* of the United States, during the years 1953 and 1954.

The above conclusion by the Court of Claims contradicts other factual conclusions of the Court in its decision of March 7, 1962 wherein the Court said:

> "The Canal Zone Government, a separate entity, is charged with the functions of civil government, such as police and fire protection, schools, magistrate Courts, and other similar activities."

The decision of the Court of Claims, as to the locale of Plaintiffs services and earnings are contradicted by the Findings of Fact by the Court of Claims as to the location of the Canal Zone Government and the Panama Canal Company to wit:

> "10. The Canal Zone is an area approximately 10 miles wide, 5 miles on each side of the center line of the waterway, extending from deep water in the Atlantic Ocean to deep water in the Pacific Ocean, excepting the city of Panama on the Pacific side and Colon on the Atlantic side which are adjacent to the Canal Zone terminal communities of Balboa and Cristobal respectively."
>
> "16. . . . The end result is that the Treasury of the United States pays no part of the cost of the operation of the Canal Zone Government. Appropriated funds are not used for the payment of payrolls or other expenses of the Panama Canal Company, except to the extent that the company is reimbursed for services which it performs for the Canal Zone Government."

## ARGUMENT

In the opinion of the Court of Claims, the following statement is made:

> "Plaintiffs were employed by agencies of the United States located *in an area within the legislative power of the United States.* Therefore, the income was '*derived from sources within the United States*' and we hold it within the taxing power of the Congress. Plaintiffs are therefore *not entitled to recover* and their petition, as amended, will be dismissed.
> "It is so ordered." (Italics supplied)

The above finding constitutes error in fact and in law.

No warrant in law exists, we respectfully submit, for the above finding.

We further submit these conclusions by the Court were based upon an erroneous conception of the taxing power of Congress. We further respectfully submit that the Court's refusal to hold that the taxes complained of were wrongfully assessed and withheld in violation of the 5th and 14th Amendments to the Constitution, should be reviewed, and a determination rendered to the effect that defendants unlawfully levied and collected taxes against plaintiffs upon their earnings for 1953 and 1954, as employees of the Panama Canal Company and the Canal Zone Government *outside the United States.*

The following sums were earned and plaintiffs paid the following taxes:

| | | | | Earnings | Taxes |
|---|---|---|---|---|---|
| 1953 | Husband | Panama Canal Co. | Canal Zone | $4,883.68 | |
| | Wife | Canal Zone Govt. | Canal Zone | 110.00 | $ 407.01 |
| 1954 | Husband | Panama Canal Co. | Canal Zone | 5,593.45 | |
| | Wife | Panama Canal Co. | Canal Zone | 3,982.50 | 1,291.31 |

Refunds on other items in Plaintiffs' original Petition are waived.

Plaintiffs urge upon the Court that nothing in the evidence, as set out in the Commissioner's report, or in the

briefs or in the Court's Findings of Fact, warrants the conclusion that any of the above income received by the Plaintiffs for their services to the above organizations during 1953 and 1954 were received by said Plaintiffs from agencies of the United States, in an area "within the legislative power of the United States" and Plaintiffs urge that taxing such earnings by the Internal Revenue Bureau of the United States was legally invalid.

**Section 931, Subsection (i), Internal Revenue Code of 1954, Creating An Irrebuttable Presumption of Tax Liability Is Unconstitutional and Violates Both the 5th and 14th Amendments**

The Fifth Amendment to the Constitution of the United States is quoted above and the relevant portion offered, governing property rights, reads as follows:

> No citizen shall be "deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Section 931(i) of the Internal Revenue Code presents an irrebuttable presumption wherein it declares that the services of a citizen of the United States, as an employee of the United States or any agency thereof, "shall be *deemed to be derived from sources within the United States.*"

Similar presumptions declaring a fact to exist when such declaration is contrary to such fact so declared, amounts to a denial of due process to the citizen affected.

Many cases have gone to this Court for an interpretation of similar statutes of an arbitrary character where presumption of facts against reality existed, thereby denying to a citizen or taxpayer opportunity to prove the true facts; and such statutes were held to be unconstitutional.

In the case of *Schlesinger* v. *United States*, 270 U.S. 230, this Court confirmed the principle that an irrebuttable

presumption against realities or provable facts was so unreasonable and arbitrary that it could not stand under the Fourteenth Amendment. And in the case of *Coolidge* v. *Long*, 282 U.S. 383, this Court held that the principles requiring due process were the same in the Fifth and Fourteenth Amendments.

The 5th and 14th Amendments are linked together by this Court in *Coolidge* v. *Long*, 282 U.S. 582, 75 L. Ed. 562.

In *United States* v. *Wells*, 283 U.S. 102, this Court (opinion by Chief Justice Hughes) decided that any assumption of contemplated death creates a situation where the act of the Legislature cannot stand if the right to prove the contrary to the assumption is not afforded.

Another important case, *Nichols* v. *Coolidge*, 274 U.S. 531; opinion by Mr. Justice McReynolds, holds in a broader sense and this Court applied the same principle of invalidity as to an arbitrary statute as to the title to property, *Chase National Bank* v. *United States*, 273 U.S. 827.

**The Court of Claims Decision That Plaintiffs Were Employed in an Area Within the Legislative Power of the United States Is Unsupported by the Law and Contradicted by the Evidence in the Court's Findings of Fact**

The Court found as a fact that the Plaintiffs were employed in locations without the boundaries of the United States as per the schedule of their earnings and withholding taxes collected by the Defendants, as follows:

| | | | | Earnings | Taxes |
|---|---|---|---|---|---|
| 1953 | Husband | Panama Canal Co. | Canal Zone | $4,883.68 | $ 407.01 |
| | Wife | Canal Zone Govt. | Canal Zone | 110.00 | |
| 1954 | Husband | Panama Canal Co. | Canal Zone | 5,593.45 | 1,201.34 |
| | Wife | Panama Canal Co. | Canal Zone | 3,982.50 | |

Refunds on other items in Plaintiffs' original Petition are waived.

In this case the Court of Claims found as a fact that there was no evidence in the record showing that income earned by Plaintiffs either from the U. S. Navy or the U. S. Army, was derived from sources outside the United States. Hence, it is a necessary inference that the earnings and taxes, scheduled as above, were from sources outside the United States. Such a conclusion is consistent with the unquestioned fact that Plaintiffs were located and worked for the Canal Zone Government and the Panama Canal Co., in territory outside the United States and hence such earnings were not taxable because not earned within the United States.

The Court was entirely unwarranted in reaching its vague and unsupported conclusion of fact that Plaintiffs were employed by agencies of the United States and received their earnings as such from sources *within* the boundaries of the United States. Such earnings could not be taxed merely because of the unexplained and irrelevant statement (dictum) that the places of their employment were "located in an area within the legislative power of the United States."

In *Heiner* v. *Doonan*, 285 U.S. 312, this Court said:

> "This Court has held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment."

For examples the Court cited:

> *Bailey* v. *Alabama*, 219 U.S. 230
> *Manley* v. *Georgia*, 279 U.S. 1-56

> "It is apparent" this Court said in the Bailey case "that a Constitutional prohibition can not be *transgressed* indirectly by the creation of a statutory presumption any more than it can be violated by direct statement. The power to create presumptions is not a means of escape from Constitutional limitations."

Opinion by Mr. Justice Sutherland.

This case cites with approval: *Estate of Schlesinger*, 270 U.S. 260.

The *Wells* case further held that:

> "Rights guaranteed by the Federal Constitution are not to be so lightly treated, they are superior to this supposed necessity."

This Court stated also in its opinion in *U. S.* v. *Wells*, 283 U.S. 102 that many lower Courts have followed the above case of *Heiner* v. *Doonan* and *Schlesinger* v. *Wisconsin*, 270 U.S. 230.

In the above cases the Court reached its conclusion in each case on the principle that:

> ". . . a statute which imposes a tax upon an irrebuttable presumption of fact, which the taxpayer is forbidden to controvert, is so arbitrary and unreasonable that it cannot stand under the 14th Amendment."
>
> Nor is "it material that the 14th Amendment was involved in the Schlesinger case instead of the 5th Amendment. The restraint imposed upon legislation by the due process clause (of the Constitution) of the two amendments is the same."

In the case of *Coolidge* v. *Long*, 282 U.S. 582, this Court held, referring to a previous decision, the Bailey case, 219 U.S. 238:

> ". . . that a statute which imposes a tax upon an assumption of fact which the taxpayer is forbidden to controvert is so arbitrary and unreasonable that it cannot stand under the 14th Amendment."

The same principle as that above was established by this Court in *Nichols* v. *Coolidge*, 274 U.S. 531. In that case this Court said that the effort to collect a tax on the gross estate of a decedent, that all his property could be included

in determining the tax, but to include the property of his wife, by presumption, would violate the Fifth Amendment to the Constitution of the United States. On this subject this Court said:

> "This Court has recognized that a statute purporting to tax may be so arbitrary and capricious as to amount to confiscation and affect the 5th Amendment."

**Gift in Contemplation of Death**

In each of the cases practically the same language as to presumptions was used to deprive taxpayers of some property rights "by assuming facts" which the persons affected were not permitted to disprove were contrary facts.

The Act in question reads as follows:

> "Any transfer of his property in the nature of a final disposition or distribution thereof, made by the deceased within two years prior to his death without such a consideration shall, unless shown to the contrary, *be deemed to have been made in contemplation of death within the meaning of this title.* (Italics ours.)
>
> Sec. 402 Rev. Act 1918, 40 Stat. AT L. 1057.

In effect the Supreme Court opinion, *U. S.* v. *Wells*, 238 U.S. 102, held that the transfer or motive in the disposition or distribution of his property to be effective must be proved.

In the *Hooper* case, 284 U.S. 206, opinion by Mr. Justice Roberts, it was held the husband could not be taxed on his net income including his wife's income and that the inclusion of the wife's income without the authority and inclusion thereof by the husband and wife was a violation of the due process guaranteed by the 14th Amendment to the Constitution.

In the opinion of Mr. Justice Roberts referred to, 284 U.S. 106, this Court said "Such taxation is also arbitrary and capricious."

Another death statute governing gifts was passed on by this Court in the *Schlesinger* case, 270 U.S. 230, in which the statute under attack provided that gifts within six years of death were conclusively presumed to have been in contemplation of death. In this case the opinion was delivered for the Court by Mr. Justice McReynolds from which we quote:

> "The challenged enactment plainly undertakes to raise a conclusive presumption that all material gifts made within six years of death were made in anticipation of it, and to tag a graduated inheritance tax upon them without regard to the actual intentions. The presumption is declared to be conclusive, and can not be overcome by evidence. It is no mere prima facie presumption of fact. Decision reversed."

In the *Schlesinger* case Mr. Justice Sutherland reversed the lower court using the following language:

> "The Schlesinger case has since been applied many times by the lower Federal Court, by the Board of Tax Appeals, and by State Courts. They all determined that a statute which imposes a tax upon an assumption of fact which the tax payer is forbidden to controvert is so arbitrary and unreasonable that it can not stand under the 14th Amendment."

Citing 270 U.S. 237, in the *Schlesinger* case above referred to, this Court said:

> "But the presumption here created is not of that kind. It is made definitely conclusive,—incapable of being overcome by proof of the most positive character.

Citing also *Hooper against U.S. Tax Court*, page 230, 43 A.L.R. page 224, referring to the opinion of Mr. Justice Sutherland in *Heiner* v. *Donnan*, 285 U.S. 312, the Court made its ruling to apply to "any purpose whatever" in the following language:

> "The State is forbidden to deny due process of law or the equal protection of the laws *for any purpose whatsoever.*" (Italics ours.)

We also quote from the opinion of *Heiner* v. *Doonan*, 285 U.S. 776, page 780:

> "an attempt by legislative fiat to enact into existence a fact which does not and cannot be made to exist in actuality, and the result is the same."

Opinion in this case was written by Mr. Justice Stone.

The principles above declared, cited, and quoted from in this Court establish the fact that the Court of Claims was utterly without power to declare the earnings of Plaintiffs, while they worked in the Panama Canal Zone as employees of the Canal Zone Government and Panama Canal Co., were paid to them "within the United States."

The Court of Claims decision did not decide the real issue raised by Plaintiffs' petition. The real issue affecting Plaintiffs was taxation on their earnings for the years 1953 and 1954, amounting to a sum in excess of $1,600. The Court of Claims decision by-passes the real issue as to where this money was earned by and paid to Plaintiffs and registers a *non sequitur* conclusion by which that Court refuses to permit Plaintiffs to recover taxes illegally assessed and collected against their earnings which accrued and were paid to them without the boundaries of the United States and not within the United States.

It does not follow legally or factually that the income sources of Plaintiffs were within the United States and there is no basis in the record to justify such a conclusion. The Court of Claims attempts to justify this rejection of Plaintiffs' claims for refund by an arbitrary and capricious statement that

> "Plaintiffs were employed by agencies of the United States located in an area within the legislative power of the United States. Therefore, the income was 'derived from sources within the United States' and we hold it within the taxing power of the Congress."

Such a conclusion is contrary to the Findings of Fact by the Court itself and by the findings of the Commissioner adopted by the Court.

Likewise the Court of Claims reached an arbitrary and capricious conclusion when it made the further statement in its opinion and decision of March 7, 1962

> "Plaintiffs are therefore not entitled to recover and their petition, as amended, will be dismissed.
>
> "It is so ordered."

We call the Court's attention at this point to Chapter 79 Section 7701, page 995 of Internal Revenue Code of 1954, under title "Definitions," reading as follows:

> "(9) UNITED STATES.—The term 'United States' when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia."

Not only does the decision by the Court of Claims arbitrarily and capriciously dismiss Plaintiffs' petition as amended but directly violates the language of the statute just quoted as to territorial limits of the United States.

As is fully disclosed in the above statements and authorities, the central question raised in this case is the arbitrary and conclusive presumption raised against Plaintiffs by the language of Section 931 subsection (i) of the Internal Revenue Code of 1954.

Linked with the above language arises the failure of the Court of Claims to declare whether or not it found subsection (i) of Section 931 unconstitutional because it deprives Plaintiffs, in an arbitrary and conclusive way, from disproving the provisions of subsection (i) of Section 931.

In view of the vitally serious terms of subsection (i) of Section 931, and its arbitrary and conclusive character, closing the doors of proof as to actual facts with respect to the earnings and tax liability of Plaintiffs, we deem it of

greatest importance to further discuss the opinion of the Court below as to the proper interpretation of similar statutes which have been declared invalid and unconstitutional for the reasons which we contend should condemn subsection (i) of Section 931 as also being a perversion of power in the Congress and a clear violation of the due process clauses of the 5th and 14th Amendments to the Constitution.

By an Act of Congress, Section 402(c) of the Revised Act of 1918—40 stat at large, page 1057, the arbitrary language condemned by this Court in U.S. against Wells, 283 U.S. 102, provided that "gifts made in contemplation of death" were invalid and unconstitutional unless factual proof was shown that the testator or donor really did contemplate death and acted for that reason alone, the language of the Court holding that there:

> must be a present contemplation of death. Not so in Wells case. He had many diagnoses and operations, and was accustomed to making conveyances and gifts to friends.

The language of the above statute reads as follows:

> "Any transfer of his property in the nature of a final disposition or distribution thereof, made by the deceased within two years prior to his death without such a consideration shall, unless shown to the contrary, *be deemed to have been made in contemplation of death within the meaning of this title.*" (Italics supplied.)

The Court will please note the use of practically the same language in this quoted provision of law as we have in the statute under attack in this case.

In the Wells case in the clause condemned by the Court the statute read that it should "be deemed to have been made in contemplation of death within the meaning of this title." In construing this statute this Court in 284 U.S.

106, opinion by Mr. Justice Roberts stated that the fact of intention to make a gift in contemplation of death must be proved as any other fact and the presumption of such intention without such proof would be a violation of the due process clause of the 14th Amendment to the Constitution and, of course, to the 5th Amendment of the Constitution as well. Mr. Justice Roberts in his opinion in 204 U.S. 105 stated that "such taxation is arbitrary and capricious."

In a later case, *Heiner v. Doonan*, already cited above, the opinion of this Court stated:

> "The challenged enactment plainly undertakes to raise a conclusive presumption that all material gifts made within six years of death were made in anticipation of it, and to tag a graduated inheritance tax upon them without regard to the actual intentions. The presumption is declared to be conclusive, and can not be overcome by evidence. It is no mere prima facie presumption of fact. Decision reversed."

The arbitrary presumption in Section 931, subsection (i) of Internal Revenue Code of 1954, under the terms of which Plaintiffs were assessed taxes for the years 1953 and 1954 as above set out contravenes the due process clause of the 5th and 14th Amendments to the Constitution just as much as do the statutes considered in the opinions of this Court condemning the arbitrary assessment of taxes on gifts in contemplation of death, and the inclusion in the husband's return of income of the income of his wife and in the Schlesinger case, where this Court said that a statute "which imposes a tax upon *an assumption of fact which the tax payer is forbidden to controvert is so arbitrary and unreasonable that it can not stand* under the 14th Amendment." *Schlesinger v. Wisconsin*, 279 U.S. 230. (Italics ours.)

In this case the language of subsection (i) of Section 931 of the Internal Revenue Code of 1954 falls in the same class

as to arbitrariness as the limitation upon gifts made under the 2-year statute or the 6-year statute. In fact the present limitation of subsection (i) of Section 931 contains all the elements of a final presumption of fact with respect to Plaintiffs earnings in the Panama Canal Zone, while working for the Panama Canal Company, that ingenuity could devise, and said presumption is so irrebuttable that opportunity to prove the contrary as to the status of Plaintiff's employment and payments therefor for the years 1953 and 1954 are absolutely foreclosed. Hence, said statute contravenes the due process clause of the 5th Amendment to the Constitution as well as the 14th Amendment because they deny employees of the United States or its agencies an exemption from Federal income taxes when employed by agencies of the United States by providing that income of such employees "shall be deemed to be derived from from sources within the United States" when they were actually derived from earnings in the Panama Canal Zone Government and the Panama Canal Company, without the United States.

Webster's New International Dictionary (1928) defines the word "deem" as follows:

> "To pass judgment; to render a decision; to act as a judge or arbitrator; to sit in judgment over or upon; to judge; also to pronounce judgment upon; to decide (a case) or give (sentence); sometimes, specifically, to judge adversely; to censure or condemn. To conclude or believe on consideration; to form a judgment upon; to hold in opinion; to regard, esteem; think. To give or decree as a result of judgment; to award; ordain."

To pass judgment or to give a sentence implies a hearing upon which a judicial decision may be rendered. Certainly no such opportunity to present the true facts was afforded Plaintiffs. In fact, the questioned statute did not permit a hearing.

## CONCLUSION

We can see no warrant for the *provisions* in the opinion of the Court of Claims wherein that Court says that the Panama Canal Government and the Panama Canal Zone are "located in an area within the legislative power of the United States"; nor can we see any logical reason why the Court of Claims should have assumed the power to decide that the monies paid to Plaintiffs for the years 1953 and 1954 were "derived from sources within the United States". Such conclusions are not a result of logical inference or proven fact; for surely such conclusions are not based on anything in the record in the way of evidence supporting such conclusion. Hence, such conclusions fall within the same condemnation as subsection (i) of Section 931 of the Internal Revenue Code of 1954. Such conclusions also contravene the due process clauses of the 5th and 14th Amendments to the Constitution of the United States and the decision of the Court of Claims herein should be reversed and the taxes paid by Plaintiffs for the years 1953 and 1954 should be refunded.

Respectfully submitted,

JOHN W.D. COLLINS
and
MARGARET W. COLLINS,
*Plaintiffs*

ROBERT H. MCNEILL
*Attorney for Plaintiffs*
815 Fifteenth Street, N.W.
Washington 5, D. C.

# APPENDIX

SUPREME COURT OF THE UNITED STATES
October Term, 1961

No.

JOHN W. D. COLLINS, ET AL., *Petitioners*,

v.

UNITED STATES.

---

## Order Extending Time to File Petition for Writ of Certiorari

---

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 5th, 1962.

(S) EARL WARREN
*Chief Justice of the United States.*

Dated this 4th day of June, 1962.

SUPREME COURT OF THE UNITED STATES

October Term, 1961

No.

JOHN W. D. COLLINS, ET AL., *Petitioners*,

v.

UNITED STATES.

**Order Extending Time to File Petition for Writ of Certiorari**

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby further extended to and including August 1st, 1962.

(S) EARL WARREN
*Chief Justice of the United States.*

Dated this 27th day of June, 1962.

IN THE UNITED STATES COURT OF CLAIMS

No. 477-56

(Decided March 7, 1962)

---

JOHN W. D. COLLINS AND MARGARET W. COLLINS

v.

THE UNITED STATES

---

*Robert H. McNeil* for plaintiffs. *R. G. de Quevedo* was on the brief.

*Jerry M. Hamovit*, with whom was *Assistant Attorney General Louis F. Oberdorfer* for the defendant. *Lyle M. Turner* and *Philip R. Miller* were on the brief.

**Opinion**

PER CURIAM: This is a suit for the recovery of income taxes deducted for the years 1951 through 1954 from the salaries of plaintiffs, husband and wife, who are citizens of the United States and were employed by various agencies of the United States Government while residing in the Republic of Panama in 1951 and 1952 and the Canal Zone in 1953 and 1954. The question involved is whether Section 251(j) of the Internal Revenue Code of 1939, 26 U.S.C. § 251 (1952 Ed.), and the comparable Section 931(i) of the Internal Revenue Code of 1954; 26 U.S.C. § 931 (1958 Ed.), contravene the due process clause of the Fifth Amendment to the Constitution, because they deny employees of the United States or its agencies an exemption from Federal income taxes when employed in possessions of the United States, by providing that income of Federal employees shall

"be deemed to be derived from sources within the United States." Plaintiffs were employed by agencies of the United States located in an area within the legislative power of the United States. Therefore, the income was "derived from sources within the United States" and we hold it within the taxing power of the Congress. Plaintiffs are therefore not entitled to recover and their petition, as amended, will be dismissed.

It is so ordered.

## Findings of Fact

The court, having considered the evidence, the report of Trial Commissioner Wilson Cowen, and the briefs and argument of counsel, makes findings of fact as follows:

1. Plaintiffs are husband and wife, citizens of the United States. During the years 1953 and 1954, they were residents of the Canal Zone. During the years 1951 and 1952, they did not reside in the Canal Zone but resided in the Republic of Panama.

2. Plaintiffs filed joint Federal income tax returns (Form 1040) for each of the taxable years 1951 to 1954 inclusive.

3. The following schedule shows their tax liability per return, payments made by withholding or otherwise, and refunds heretofore allowed for each of the taxable years 1951 to 1954 inclusive:

| Taxable year | Tax liability per return | Paid by withholding | Refunded or additional paid* |
|---|---|---|---|
| 1951 | $ 314.71 | $ 367.00 | $ 52.29 |
| 1952 | 44.00 | 313.00 | 269.00 |
| 1953 | 407.01 | 429.26 | 22.25 |
| 1954 | 1,201.34 | 1,156.40 | *(44.94) |

4. Plaintiffs filed claims for refunds (Form 843) for each of the taxable years 1951 to 1954 inclusive, on the dates and for the amounts as follows:

| Taxable year | Date filed | Amount claimed |
|---|---|---|
| 1951 | Feb. 18, 1952 | $ 314.71 |
| 1951 (amended) | Jan. 12, 1956 | 314.71 |
| 1952 | Jan. 12, 1956 | 44.00 |
| 1953 | Jan. 12, 1956 | 407.01 |
| 1954 | Apr. 15, 1955 | 1,201.34 |
| 1954 (amended) | Jan. 27, 1956 | 1,201.34 |

5. In their claims for refund, plaintiffs alleged that Section 251(j) of the Internal Revenue Code of 1939 (or Section 931(j) of the 1954 Code) violates the Fifth Amendment of the Constitution and is beyond the taxing power of the Congress for the following reasons stated in the claims:

a. *Taxations without representation*—U.S. citizens working in the Canal Zone have no right of representation in Congress;

b. *Discriminatory*—because other U.S. citizens living and employed in the Canal Zone are not taxed and U.S. citizens employed by the U.S. Government in other Territories and Possessions receive tax free cost-of-living differential while U.S. employees working for the Panama Canal Company and Canal Zone Government in the Zone are taxed on their differential, such classification and treatment is arbitrary;

c. *Non-uniformity of benefits*—The Canal Zone receives no grant in aid benefits such as are extended to the States, Territories and Possessions;

d. *Presumption contrary to fact*—Sec. 220 of the Revenue Act of 1950 states a presumption contrary to fact. Since July 1, 1951, employees of the Panama Canal Company and Canal Zone Government have been

paid by the Panama Canal Company from funds collected in the Canal Zone. A presumption cannot be made a basis for taxation. It is obvious that Panama Canal Company/Canal Zone Government employees are paid from a source without the United States and a legislative fiat to the contrary is not valid. This statement applies only to employees of the Panama Canal Company and Canal Zone Government and not to such of the claimants who are paid by direct appropriation;

e. *The Federal Government has no power to tax citizens beyond its borders for income received and expended there*—Violation of Treaty Obligations—Sec. 214 of the Revenue Act of 1950 provides that no amendment made by the Act of 1950 shall apply in any case where its application would be contrary to any Treaty Obligation of the United States. This tax is contrary to the policy of the Treaty between the United States and the Republic of Panama, July 27, 1939.

6. None of the claims for refund has ever been formally disallowed by registered mail by either the Secretary of the Treasury or his delegate. More than six months elapsed between the filing of each of the claims and the petition herein.

7. Plaintiffs, during the taxable years 1951 to 1954 inclusive, received income upon which they paid Federal income tax, from the following employers in the locations and amounts shown:

| Taxable year | Husband or wife | Employer | Location | Amount shown |
|---|---|---|---|---|
| 1951 | Husband | U.S. Navy | Canal Zone | $3,575.78 |
| | Wife | U.S. Army | Canal Zone | 565.00 |
| | Wife | Texas Council | Austin Texas | 240.00 |
| 1952 | Husband | U.S. Navy | Canal Zone | 2,899.29 |
| 1953 | Husband | Panama Canal Co. | Canal Zone | 4,883.68 |
| | Wife | Canal Zone Government | Canal Zone | 110.00 |
| | Wife | U.S. Army | Canal Zone | 376.75 |
| 1954 | Husband | Panama Canal Co. | Canal Zone | 5,593.45 |
| | Wife | Panama Canal Co. | Canal Zone | 3,982.50 |
| | Wife | U.S. Army | Canal Zone | 228.85 |

8. The record contains no evidence that income earned by plaintiffs either from the U.S. Navy or the U.S. Army was derived from sources outside the United States.

9. The Panama Canal Company, a corporate agency of the United States, established by Public Law 841, 81st Congress, operates the Canal and its related business-type activities. The stock in the company is held by the Secretary of the Army. The company operates the ship repair facilities, the docks, the steamship terminal facilities, the warehouses, the commissaries (retail stores), and the electric power system.

The Canal Zone Government, a separate entity, is charged with the functions of civil government, such as police and fire protection, schools, magistrate courts, and other similar activities.

The Governor of the Canal Zone is ex officio president of the Panama Canal Company. The company and the government are closely interrelated in purposes, organization, and operations, and the function of the two agencies in combination is the administration of the Panama Canal enterprise as a whole.

In addition to the Panama Canal Company and the Canal Zone Government, the headquarters of the Caribbean Command of the United States Army, of the 15th Naval District, and of the Caribbean Air Command, are located in the Canal Zone. To some extent, these military forces support the Canal Zone Government in that they may, under the direction of the Canal Zone Governor, be called out to provide military protection in case of riots and civil disorders. There is also a United States District Court for the district of the Canal Zone. It is staffed in part by the Department of Justice and operates under the general supervision of the Administrative Office of the U.S. Courts.

10. The Canal Zone is an area approximately 10 miles wide, 5 miles on each side of the center line of the water-

way, extending from deep water in the Atlantic Ocean to deep water in the Pacific Ocean, excepting the city of Panama on the Pacific side and Colon on the Atlantic side which are adjacent to the Canal Zone terminal communities of Balboa and Cristobal respectively.

11. The basic rights and obligations between the United States and the Republic of Panama are for the most part contained in the Convention of 1903 and the Treaties of 1936 and 1955.

The Convention of 1903, by preamble, acknowledges sovereignty vested in Panama which then in turn grants to the United States in perpetuity and as if it were sovereign, the use, occupation and control of the Canal Zone in return for an outright payment of $10,000,000, plus an annual payment, during the life of the Convention, of $250,000.

The Treaty of 1936 modified and revoked certain rights held by the United States under the 1903 Convention, and placed a number of restrictions on the rights of the United States within the Canal Zone. Certain provisions considered as out of order to the status of a sovereign nation were abrogated and the United States agreed to limit residence and the sale of goods and services in the Zone to persons directly related to the canal enterprise and not permit the establishment of new private businesses other than those having a direct relation to the operation and maintenance of the Canal. The annual payments were increased to $430,000.

The Treaty of 1955 placed further restrictions on the United States and increased the annual payments to $1,930,000.

12. Within the Canal Zone certain private industries having a direct relationship to the operation of the waterway, such as commercial banks, steamship agencies and oil companies, conduct operations, and some of their employees live within the Zone.

13. Both the Panama Canal Company and the Canal Zone Government account for their funds on fiscal years ended June 30.

14. The Canal Company receives revenues from tolls for ships transiting the Canal, services to shipping, services and sales to employees and others, and for some services rendered to the Republic of Panama.

15. The Canal Company is required to prescribe tolls at a rate calculated to cover, under a statutory formula and as nearly as practicable, the cost of maintaining and operating the Panama Canal, together with facilities and appurtenances related thereto, including interest, depreciation, the net cost of the operation of the Canal Zone Government, and, during the years 1951 and 1954 inclusive, the total annual payment to the Republic of Panama.

16. Since 1952 the Congress has made no appropriations for the operation of the Panama Canal Company but has approved the company's budgets. However, the company does have recourse to appropriations if needed. The Congress appropriates operating and capital funds for the Canal Zone Government, which are placed in an account with the Treasury of the United States and segregated from the funds of the Panama Canal Company. Any funds appropriated and used by the Canal Zone Government must be reimbursed at the end of the fiscal year by the Panama Canal Company. The end result is that the Treasury of the United States pays no part of the cost of the operation of the Canal Zone Government. Appropriated funds are not used for the payment of payrolls or other expenses of the Panama Canal Company, except to the extent that the company is reimbursed for services which it performs for the Canal Zone Government.

17. The statutory formula, referred to above, does not require the Panama Canal Company to reimburse the United States for the cost of maintaining the military units at the

Canal Zone nor for the expenses incurred in connection with the use of such military units during riots or civil disorders at the request of the Governor of the Panama Canal Zone.

18. The revenues earned by the Panama Canal Company for sales and services performed in the Zone are physically collected there and deposited in one of two commercial banks located in the Zone. Deposits in the commercial banks in excess of the normal working needs of the company are transferred to its account in the United States Treasury. When necessary to do so, the company can also draw money from its account in the Treasury.

19. The Panama Canal Company pays its employees who work in the Canal Zone with checks drawn on its pa, roll account with a Canal Zone bank. If the payroll account does not contain sufficient funds to meet payroll needs, funds are transferred to it from the company's account with the Treasury.

20. Computed in accordance with the statutory formula referred to in finding 15, the net income of the Panama Canal Company for the fiscal years ended June 30, 1952 to June 30, 1955 inclusive, was as follows:

| *Year* | *Amount* |
|---|---|
| 1952 | $2,369,0[illegible]0 |
| 1953 | 7,200,963 |
| 1954 | 4,160,010 |
| 1955 | 581,134 |

## Conclusion of Law

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiffs are not entitled to recover, and the petition, as amended, is therefore dismissed.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 31 1962
JOHN F. DAVIS, CLERK

No. 294

# In the Supreme Court of the United States

October Term, 1962

JOHN W. DE COLLINS, ET UX., PETITIONERS

v.

UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
JOSEPH A. BARR, JR.,
Assistant Attorney General,
DAVID G. BRADLEY,
Attorney,
Department of Justice,
Washington 25, D. C.

# INDEX


| | Page |
|---|---|
| Opinion below | 1 |
| Jurisdiction | 1 |
| Question presented | 2 |
| Statutes involved | 2 |
| Statement | 2 |
| Argument | 3 |
| Conclusion | 7 |
| Appendix | 8 |


## CITATIONS


| | |
|---|---|
| Cases: | |
| *Cook* v. *Tait*, 265 U.S. 47 | 3 |
| *Heiner* v. *Donnan*, 285 U.S. 312 | 6 |
| Statutes: | |
| Internal Revenue Code of 1939: | |
| Sec. 116(a) | 2, 3, 8 |
| Sec. 251(a) | 2, 3, 8 |
| Sec. 251(j) | 2, 8 |
| Internal Revenue Code of 1954: | |
| Sec. 911(a) | 2, 3, 9 |
| Sec. 931(a) | 2, 4, 9 |
| Sec. 931(i) | 2 |
| Revenue Act of 1950, c. 994, 64 Stat. 906, Sec. 220 | 4 |
| Miscellaneous: | |
| H. Rep. No. 2319, 81st Cong., 2d Sess., p. 58 (1950–2 Cum. Bull. 380, 424) | 4 |
| S. Rep. No. 2375, 81st Cong., 2d Sess., p. 48 (1950–2 Cum. Bull. 483, 518) | 5 |




656883—62

# In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 294

JOHN W. D. COLLINS AND MARGARET W. COLLINS, PETITIONERS

*v.*

UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The opinion of the Court of Claims (Pet. App. 3a–4a) is reported at 299 F. 2d 949. Its findings of fact and conclusion of law (Pet. App. 4a–10a) are not officially reported.

### JURISDICTION

The judgment of the Court of Claims was entered on March 7, 1962 (Pet. App. 3a). Chief Justice Warren granted successive extensions of time to August 1, 1962, for filing taxpayers' petition for a writ of certiorari (Pet. App. 1a–2a). The petition was filed on August 1, 1962. The jurisdiction of this Court rests on 28 U.S.C. 1255.

## QUESTION PRESENTED

Whether the income tax imposed by Congress upon the income of United States citizens for services performed by them as employees of the United States in the Canal Zone is unconstitutional.

## STATUTES INVOLVED

Sections 116(a)(1) and 251 (a) and (j) of the Internal Revenue Code of 1939 and Sections 911(a)(1) and 931(a) (1) and (2) and (i) of the Internal Revenue Code of 1954 are printed in the Appendix, *infra*, pp. 8–10.

## STATEMENT

The facts as found by the Court of Claims (Pet. App. 4a–10a), are not in dispute (Pet. 2). As relevant here, they may be summarized as follows:

In 1953 and 1954 the taxpayers, citizens of the United States and residents of the Canal Zone, were employed by the Panama Canal Company and the Canal Zone Government (Pet. App. 4a, 6a). The Panama Canal Company is a corporate agency of the United States, which operates the Canal and its related business-type activities. The Canal Zone Government, a separate entity which is also part of the United States Government, is charged with the functions of civil government in the Canal Zone (Pet. App. 7a).

The taxpayers paid federal income taxes on the payments received from the Panama Canal Company and Canal Zone Government, filed claims for refund, and brought suit for a refund (Pet. 4a–6a). The Court of Claims, in a *per curiam* opinion, held that the tax did

not violate the due process clause of the Fifth Amendment and therefore the taxpayers were not entitled to recover (Pet. App. 3a–4a).

## ARGUMENT

The taxpayers' claim that Congress has unconstitutionally subjected them to the federal income tax is without merit.

In the first place, it is clear that Congress had the power to tax the incomes of the taxpayers. In *Cook v. Tait*, 265 U.S. 47, the Court held that Congress has the constitutional power to tax the income of citizens of the United States, whether or not they are domiciled in the United States, and even if the income is derived from property or activities outside the United States. Consequently, American citizens residing in a possession of the United States and receiving income from the United States Government itself are surely within the taxing power of Congress.

It is also clear that Congress intended to exercise its constitutional power to tax the income of persons like the taxpayers here. Congress has exempted from the United States income tax, subject to certain limitations, earned income of *bona fide* residents of foreign countries from sources outside of the United States, except when this income has been paid by the United States or one of its agencies. Section 116(a)(1), Internal Revenue Code of 1939 (Appendix, *infra*, p. 8); Section 911(a)(1), Internal Revenue Code of 1954 (Appendix, *infra*, p. 9). This exemption is limited to residents of foreign countries; it does

not extend to residents of possessions or territories of the United States.

Similarly, Congress granted a partial exemption of income earned by citizens in possessions of the United States. To achieve this result, the Internal Revenue Code exempts citizens of the United States or domestic corporations from income tax, except on gross income from sources within the United States, if (1) 80 percent of their gross income for the three-year period ending with the close of the taxable year was derived from sources within a United States possession; or (2) 50 percent of gross income was derived from the operation of a trade or business within a possession of the United States. Section 251(a), Internal Revenue Code of 1939 (Appendix, *infra*, p. 8); Section 931(a), Internal Revenue Code of 1954 (Appendix, *infra*, pp. 9–10).

It was in this context that the statutes here involved were enacted. Section 220 of the Revenue Act of 1950, c. 994, 64 Stat. 906, added Section 251(j) of the 1939 Code (Appendix, *infra*, p. 9) (now Section 931(i) of the 1954 Code) (Appendix, *infra*, p. 10). This provision denies the partial exemption for income earned in possessions of the United States when the income is paid by the United States or its agencies. In effecting this change, Congress stated (H. Rep. No. 2319, 81st Cong., 2d Sess., p. 58 (1950–2 Cum. Bull. 380, 424)):

> Military and civilian personnel of the Government who are citizens of the United States are not exempt from income tax when they are stationed in any other part of the world, and

> their exemption while stationed in the possessions is not in any way related to the original purpose of section 251, which was to encourage American businesses in the possessions.
>
> Section 216 of your committee's bill eliminates the special treatment accorded the military and civilian employees of the United States Government and its agencies who are stationed in the possessions. Wages paid to them * * * will not be considered income from such possessions, in determining whether they are entitled to the benefits of section 251 of the Code, and will be subject to tax as income from sources within the United States.

Accord, S. Rep. No. 2375, 81st Cong., 2d Sess., p. 48 (1950–2 Cum. Bull. 483, 518).

It is not disputed that the language used by Congress carries out its intent and that the language does not exempt these taxpayers from the tax. The taxpayers do not deny that they are citizens of the United States, that the Canal Zone is a possession, and that its Government and the Panama Canal Company are agencies of the United States. Nor do they suggest that Congress lacks the power to classify taxpayers or that it would be an unreasonable and arbitrary classification for Congress to tax the income of citizen employees of the United States residing in a possession differently from the income of citizens who are not such employees.

It appears therefore that the taxpayers would have no complaint if Congress had drafted a separate provision specifying the tax liability of citizen-employees

of the United States or its agencies in possessions of the United States. The taxpayers' entire argument rests on the assertion that Congress has attempted to create an irrebuttable "presumption" that payments by the United States Government in the Canal Zone are derived from sources within the United States. The taxpayers claim this presumption is arbitrary when applied to them since they were paid by agencies of the government within the Canal Zone and outside of the United States, and the funds for these payments likewise came from the Canal Zone and not the United States. But Congress has not created a "presumption" at all; it has merely said that all income earned by American citizens as employees of the United States Government, even if the citizens are residents of foreign countries or United States possessions, shall be taxed on the same basis as income earned within the United States. And the taxpayers remain free to show any facts which do not bring them within the terms of the statute.

This Court's decision in *Heiner* v. *Donnan*, 285 U.S. 312, which is relied upon by the taxpayers (Pet. 12, 15–16), is in no respect comparable to the instant situation. That case held that Congress could not constitutionally presume that all transfers within two years preceding death were conclusively made in contemplation of death. The statute there involved created a conclusive evidentiary presumption with respect to a fact that was considered an essential prerequisite to Congress' power to tax. The other cases cited by taxpayers similarly rested on the assumption of lack of power in Congress to reach the same result

by other approaches. Here Congress classified certain income as taxable as a matter of law, not on the basis of a rule of evidence. As we have seen, there is no doubt of Congress' power to make this classification and tax the income in question.

## CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
*Solicitor General.*

JOHN B. JONES, JR.,
*Acting Assistant Attorney General.*

DAVID O. WALTER,
*Attorney.*

AUGUST 1962.

# APPENDIX

Internal Revenue Code of 1939:

SEC. 116. EXCLUSIONS FROM GROSS INCOME.

In addition to the items specified in section 22(b), the following items shall not be included in gross income and shall be exempt from taxation under this chapter:

(a) [as amended by Sec. 148, Revenue Act of 1942, c. 619, 56 Stat. 798, and Sec. 321, Revenue Act of 1951, c. 521, 65 Stat. 452]. *Earned Income from Sources Without the United States.*—

(1) *Bona fide resident of foreign country.*—In the case of an individual citizen of the United States who establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts constitute earned income (as defined in paragraph (3)) attributable to such period; but such individual shall not be allowed as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

* * * * * *

SEC. 251. INCOME FROM SOURCES WITHIN POSSESSIONS OF UNITED STATES.

(a) *General Rule.*—In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—

* * * * * *

(j) [as added by Sec. 220, Revenue Act of 1950, c. 994, 64 Stat. 906] *Employees of United States.*—For the purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States.

Internal Revenue Code of 1954:

SEC. 911. EARNED INCOME FROM SOURCES WITHOUT THE UNITED STATES.

(a) *General Rule.*—The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) *Bona fide resident of foreign country.*—In the case of an individual citizen of the United States, who establishes to the satisfaction of the Secretary or his delegate that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) if such amounts constitute earned income (as defined in subsection (b)) attributable to such period; but such individual shall not be allowed as a deduction from his gross income any deductions (other than those allowed by section 151, relating to personal exemptions) properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

* * * * * *

SEC. 931. INCOME FROM SOURCES WITHIN POSSESSIONS OF THE UNITED STATES.

(a) *General Rule.*—In the case of citizens of the United States or domestic corporations, gross income means only gross income from sources within the United States if the conditions of both paragraph (1) and paragraph (2) are satisfied:

(1) *Three-year period.*—If 80 percent or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section) for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) *Trade or business.*—If—

(A) in the case of such corporation, 50 percent or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(B) in the case of such citizen, 50 percent or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

* * * * *

(i) *Employees of the United States.*—For purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States.

U.S. GOVERNMENT PRINTING OFFICE:1982

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 1 196
JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

No. 294

JOHN W. D. COLLINS and MARGARET W. COLLINS,
*Petitioners*,

v.

THE UNITED STATES, *Respondent*.

## REPLY BRIEF OF PETITIONERS

ROBERT H. McNEIL,
*Attorney for Petitioners*.

Address:
815 - 15th St., N. W.
Washington, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1962

No. 294

JOHN W. D. COLLINS and MARGARET W. COLLINS,
*Petitioners*

v.

THE UNITED STATES, *Respondent*

## REPLY BRIEF OF PETITIONERS

It is deemed necessary to re-emphasize the points wherein we believe the decision by the Court of Claims showed either a misconception of the issues involved or failed to properly adjudicate and protect the constitutional rights of Petitioners, established by the admitted facts, the governing statutes and the 5th and 14th Amendments to the Constitution, directly applicable to said issues:

1. There is no issue here as to the contention in Petitioner's Petition that they were deprived of due process by presumption in Section 931(i) of the Internal Revenue Code of 1954 stating arbitrarily that their earnings for the years 1953 and 1954 were foreclosed by the assumption in said sub-section (i) that their incomes were earned and received by them *in territory "deemed to be within the United States,"* when in fact, such earnings were earned and received *without* the U. S.

The Court of Claims failed to pass upon the constitutional question raised by Petitioners and put in issue by the Respondent, in the Court of Claims and in their brief in this Court.

## APPARENT ERRORS OF FACT IN "STATEMENT" OF RESPONDENT

(A) In Respondent's Brief herein is the following "statement" or conclusion of the pleader and as determined by the Court of Claims:

> "The Canal Zone Government, a separate entity, is charged with the functions of civil government; such as police and fire protection, school, Magistrate Courts, and other similar activities."

(B) On page 2 of their brief herein, the Respondent makes the following inadmissible statement:

> "The Canal Zone Government which is also a separate entity is *also part of the United States Government.*"

We do not agree at all that the Canal Zone Government is "*also part of the United States Government.*" We do agree that the Canal Zone Government is "a separate entity," charged with certain functions, as decided by the Court of Claims, but we do not subscribe to the Statement of Defendants that the *Canal Zone Government is part of the United States Government.* We maintain that, being a separate entity, it must also be treated as another contracting party dealing with the United States from an area *without the United States.*

The Court of Claims avoided the constitutional *due process of law issue* and disposed of the case by a statement, in the nature of a conclusion of law and fact, that the Panama Canal Zone was and is located "in an area within the legislative power of the United States," dis-

regarding the Plaintiff's *right* to a determination of the question of whether or not their *right to due process* of law, under the 5th and 14th Amendments to the Constitution were arbitrarily and capriciously denied.

(C) The Constitutional question raised by Petitioners was not decided by the Court of Claims.

(D) Following the above, the Court of Claims held that the income of Petitioners was "derived from sources within the United States, and we hold it within the taxing power of the Congress."

The Court of Claims leaves unsettled and "at large", the constitutional question which the Court and all parties agreed was the issue between the Petitioners and the Respondent.

Whether the area was "within the legislative power of the United States," as stated by the Court, was a question not raised by either party; no proof was proffered or received thereon nor was any argument or legal citation submitted on that question, by either of the parties, and it is earnestly submitted that said conclusion by the Court of Claims was unwarranted, erroneous, arbitrary and capricious as shown by the record and is contradictory of its Findings of Fact and of the applicable statutes defining the Panama Canal Zone and its geographical status and the area of operation of the Panama Canal Government.

The Internal Revenue Statute Code 1954, Sec. 931(i), and the decisions of this Court have been discussed at great length in our Petition for Certiorari and the numerous cases cited therein. We now wish to re-enforce our Petition by quoting fully from Sec. 862 of The Internal Revenue Code of 1954, which was referred to generally in Plaintiff's Petition for Certiorari. After more mature consideration we respectfully submit that Section 862(a) and sub-section 3 and sub-section (b) are conclusive upon the question of where Plaintiff's earnings were accrued

and why such earnings should be free of Internal Revenue Taxation.

"862. INCOME FROM SOURCES WITHOUT THE UNITED STATES (a) *Gross income from sources without United States.*—The following items of gross income shall be treated as income from sources without the United States:

(3) *compensation for labor or personal services performed without the United States*;

(b) *Taxable income from sources without United States.*—From the item of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources *without the United States.*"

In view of the above facts and the applicable statutes just quoted the conclusion is inescapable that the acts of the Canal Zone Government and the Panama Canal Company were the acts of separate contracting entities, operating in a territory within the sovereignty of the Panama Republic, hence in an area without the United States geographically, and not within the geographical area of the United States, as legally determined by Sec. 7701, page 995, Internal Revenue Code 1954, as follows:

"*The United States.*

"The term United States, when used in a geographical sense, includes only the States, The Territories of Alaska and Hawaii (now states) and the District of Columbia."

The Court of Claims findings of fact stated: (App. 7a, p. 10, that:

"The Canal Zone is an area approximately 10 miles wide, 5 miles on each side of the center line of the

waterway, extending from deep water in the Atlantic Ocean to deep water in the Pacific Ocean, excepting the City of Panama on the Pacific side, and Colon on the Atlantic side, which are adjacent to the Canal Zone terminal Communities of Balboa and Cristobal respectively."

This Court will take judicial notice:

The area just described lies within the sovereign territory of the Panama Republic, App. Par. 11, Page 8a, and could not be within the boundaries of the United States.

"The Convention of 1903, by preamble, acknowledges *sovereignty vested in Panama* which then in turn grants to the United States in perpetuity and *as if it were sovereign*, the use, occupation and control of the Canal Zone in return for an outright payment of $10,000,000, plus an annual payment during the life of the Convention, of $250,000.00."

*Plaintiff's* App. Page 8a ¶11—

From the Finding of Fact by the Court of Claims, the following facts are conclusively stated in Par. 19, page 10a, Petitioners' App. as follows:

"The Panama Canal Company pays its employees who work in the Canal Zone with checks drawn on its payroll account with a Canal Zone Bank."

The Respondent—The United States, cites as authority for denying to plaintiffs tax exemptions for the years 1953 and 1954, the case of *Cook* v. *Tate*, 265 U.S. 47.

We submit that this case, as modified by subsequent decisions, does not justify the conclusion of the Respondent, and we further submit that the Respondent has placed a construction on the case too narrow in character. And the factual conclusions used to support their contentions are not established, but assumed.

For instance, in order to make the Cook case applicable the Respondent's brief, page 3, herein, says:

> "Consequently, American Citizens residing in a possession of the United States and receiving income from the United States *Government itself are surely within* the taxing power of Congress."

Income derived from the Panama Canal Area, we insist, is not "*income from the United States Government, itself,*" hence the conclusion based upon such an arbitrary statement is inadmissible and contrary to the law and violative of the findings of Fact by the Court of Claims, as printed in full in our App., pages 4a to 10a.

It is also clear, we urge, that the claimed exemption from taxation on their incomes earned in the Canal Zone for the years 1953 and 1954 etc., is sustained fully in the cases and statutes cited—

The brief of the Respondent, under Title "Statement", page 2 misstates the status of the Panama Canal Zone Government when it says:

"The Canal Zone Government, a separate entity, *which is also part of the United States Government*". No such status exists. Being a separate entity indicates, as a matter of fact and law, that the two contracting parties, are separate entities, hence, with different governmental functions and powers, and have the right to make contracts between themselves.

As stated by the Court of Claims' Findings of Fact and in Respondent's brief in this case the Canal Zone Government" is charged with the function of civil government in the Canal Zone (Pet. App. 7a); Respondent's brief herein, p. 2.

A statement in Respondent's brief which we deem erroneous, is that on p. 3 of Respondent's brief wherein is the following:

> "The Court of Claims in a per curiam opinion held that the tax did not violate the due process clause of the Fifth Amendment, and therefore the taxpayers were not entitled to recover."

The Court of Claims opinion is based upon the erroneous finding that the income of the plaintiffs was "derived from sources within the United States", and that Court, in its opinion held that the area where Petitioners were employed in 1953-1954 was "within the taxing power of the Congress," and that "Petitioners are therefore not entitled to recover, and their petition, as amended, will be dismissed."

The above conclusion is not a finding upon the constitutionality of the Internal Revenue law, Sec. 931 (i), but an avoidance of passing upon the constitutional question of the arbitrary violation of the *due process* clauses of the Fifth and Fourteenth Amendments which Petitioners claimed as protection to their property rights under said amendments.

The *Cook* case cited in Respondent's Brief, p. 3—was an interpretation of a statute, expressly permitting income tax upon Petitioners' income derived from property located at the place of his residence *abroad* and does not decide or affect the questions raised by the irrebuttable presumption by Sec. 931(i), Internal Revenue Code (i) 1954;—

Nor does the case of *Bennett*, 232 U.S. 299, support the argument of Respondent. This case gets its authority from a specific Statute, the Act of Aug. 5, 1909, 36 Stat-at-Large 112 and related to taxation on a boat of a citizen abroad. No arbitrary assumption was involved in either of the above cases.

In view of the findings of fact cited, the statutes involved and the numerous decisions supporting the exemptions of Petitioners from revenue taxation on their 1953 and 1954 incomes, it appears clear and without doubt that their

claims for refund should have been favorably considered and allowed, and that their Petition for Certiorari should be granted, and the important questions certified for consideration by this Court.

Respectfully submitted,

ROBERT H. MCNEIL
*Attorney for Petitioners*

Address:
815 - 15th St., N. W.
Washington, D. C.

---

NOTE: All italics are by Petitioners.